



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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February 1, 2007

Office of Indian Energy and Economic Development
Attention: Section 1813 ROW Study
Room 20 – South Interior Building
1951 Constitution Avenue, NW
Washington, DC 20245

Sent via electronic mail to: ieed@bia.edu

RE: Comments of Nez Perce Tribe on Section 1813 Rights-of-Way Revised Report (Issued on December 21, 2006)

To whom it may concern:

The Nez Perce Tribe would like to take this opportunity to provide comments on the revised draft report on energy rights-of-way (ROWs) on tribal lands that is required by Section 1813 of the Energy Policy Act of 2005. The Tribe would first like to state that it has read the joint comments submitted by the National Congress of American Indians (NCAI) and the Council of Energy Resource Tribes (CERT) on February 1, 2007 as it is a member of both organizations. The Nez Perce Tribe agrees with the substance of the comments made in the joint submission and supports those statements. In particular, the Tribe agrees with the comments made in Section 3 regarding the “central” role of tribal sovereignty in such a discussion and the possibility of tribes withdrawing their resources from the marketplace if there is a “diminution” in the role of tribal consent in energy ROWs.

The Executive Summary is a positive addition to the report. These types of summaries are important components of such reports. The summary provides a concise and accurate account of the body of the report.

Section 1.3 of the study properly limits the application of this report to ROWs for electric transmission, natural gas, and oil pipelines. However, it is also important to understand that the basic legal tenets of tribal sovereignty and self-determination that serve as the underpinnings of several conclusions in the report will apply to any relations between tribal governments and other entities.

The Tribe supports the analysis in Section 2.3.1 that indicates that the recent policies related to energy ROWs support tribal sovereignty and a reduced role of federal oversight. This is a strong statement that ultimately supports the recommendations made to allow ROW determinations to be negotiated between the parties without outside interference.

In addition to the statement earlier made about Section 3, the Nez Perce Tribe agrees with the emphasis in the findings of the importance of a tribe having the ability to manage its trust resources in a way that is in the best interest of the tribe and the conclusion that this means a "deference to and promotion of tribal control and self-determination."

Although the analyses of historical compensation that is made in Section 4 is limited in scope, the Tribe agrees with the conclusions in the report that the process of granting a ROW or renewing a ROW has evolved over time to the point where tribes are much more involved than in the past. This is an important conclusion because it illustrates that simply because the process has evolved over time as tribes became more involved does not mean it has become unfair. The increased participation of tribes in the negotiations simply means the playing field is more level.

The Nez Perce Tribe fully supports the conclusion in Section 5 that negotiations between parties is the appropriate method for determining compensation in a ROW. This conclusion is fully supported by the analysis that shows valuation of the ROW can be accomplished in a variety of ways depending on the interests, values and responsibilities of the tribal government involved. A generic solution to determine market value or value is not practical.

The Nez Perce Tribe also supports the recommendation of developing a comprehensive ROW inventory for tribal lands as access to such information would be a great aide in any ROW negotiations. In addition, model business practices might be a benefit to aid in negotiations as well.

The Nez Perce Tribe believes the findings in Section 6.1.3 are very important as they serve to rebut the basic presumption of conducting this study. If the cost of energy transportation is a relatively small component of overall energy costs and energy transportation infrastructure on tribal lands is a very small percentage of the nations overall energy infrastructure, the premise that there is a problem with ROW renewals on tribal lands is completely undermined. Individual problems or uncertainty in negotiations that may occur in some ROW renewals does not mean broad action should be taken. The report states that in the vast majority of ROW renewals are completed to mutually agreeable terms.

The Nez Perce Tribe believes the report only supports the approach outlined in Section 7.1 which states Congress should elect to make no change to current ROW negotiations. The findings in the report do not support the other approaches and in fact some of those approaches are contrary to some of the findings that discuss the fact there currently is no problem in the majority of negotiations and also the strong concept of tribal sovereignty.

The Nez Perce Tribe fully supports the recommendation made in Section 8.2 to maintain the status quo in regard to current negotiations.

The Nez Perce Tribe appreciates the opportunity to provide comments on this revised report.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca A. Miles". The signature is fluid and cursive, with the first name being the most prominent.

Rebecca A. Miles
Chairman